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ABSTRACT

This report discusses findings from 2003 surveys conducted by Advocates for Children of New York (AFC), which assessed the implementation and effectiveness of the Supplemental Education Services program (SES) required under the No Child Left Behind Act. SES services, which began in 2002-2003, offered over 240,000 eligible children in schools considered "in need of improvement" the possibility of receiving extra academic services such as tutoring and remediation outside the school day. AFC works with thousands of poor parents, helping them obtain mandated services for their children. During the past school year, parents informed AFC of their difficulties in applying for and receiving SES services. The survey asked SES private providers serving these children about strengths and barriers in implementing this program. SES services have been portrayed as a panacea for assisting poor students in failing schools succeed, and it was AFC's goal to assess how successful this assistance was to at-risk students. Of the 21 private providers serving NYC students, 16 responded to the survey. Results found major problems with implementation, both with state and city overseers giving information and assistance to private providers and providers being able to reach and serve eligible students. Services to children at especially high risk, those who were English language learners and those who were disabled, were especially problematic. (Contains over 70 endnotes.) (SM)

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Serving Those Most In Need Or Not? A report on the implementation of the NCLB's supplemental education services in New York City

Advocates For Children

October 2003

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Executive Summary

This report discusses findings from surveys conducted by Advocates for Children of New York (AFC) in 2003 to assess the implementation and effectiveness of the Supplemental Education Services program (SES) required under the federal No Child Left Behind Act (NCLB). SES services were provided for the first time in the 2002-2003 school year, offering over 240,000 eligible children who were in schools designated as "In Need of Improvement" the possibility of receiving extra academic services such as tutoring and remediation services outside of the school day. AFC works with thousands of poor parents each year, assisting them in obtaining mandated services for their children. During the past school year, we received reports from parents of the difficulties of applying for and receiving SES services. Our intent behind conducting this survey was to learn from the SES private providers serving these children of the strengths and barriers in the implementation of this program. SES services have been portrayed as a panacea for assisting poor students in failing schools succeed, and it was our goal to begin to assess how successful this possible assistance is to at-risk students. Of the 21 private providers approved and actually serving NYC students 16 responded to our survey. The results of the survey found major problems with implementation, both with state and city overseers giving information and assistance to private providers and providers being able to outreach and serve eligible students. In particular the service to children particularly at high risk, those who are English Language Learners and those who are disabled were especially problematic.

Findings

I. Communication to Parents

Survey findings indicate that many Title I eligible parents never received information on SES, or oftentimes, received it in an untimely manner. Furthermore, it was often cited that the content of the parent information letters were inaccessible for the targeted population.

- Fifty-six percent of survey respondents stated that the districts were either inefficient or extremely inefficient in their dissemination of information to parents regarding the availability of SES and program options.
- Regarding the implementation of SES, over two thirds of survey respondents anecdotally referred to problems surrounding parent outreach. Survey respondents regularly cited the timeliness and consistency of information dissemination, overall publicity of SES, the language/content of student eligibility letters, and disorganization at the administrative level, as areas in need of great improvement.
- Over 80% of survey respondents indicated through anecdotes that they did not think that parents were sufficiently informed about the availability of SES and encountered many parents whom had heard about the program through other

parents or service providers, but had never received eligibility letters from the district.

- Although the law makes clear that information sent to parents is to be in an "understandable and uniform format, and to the extent practicable, in a language the parent can understand," survey findings indicate that information was not parent friendly.

II. Cooperation Amongst the SEA, LEA, and Providers

- 44% of survey respondents found it difficult or extremely difficult to enter schools in efforts to promote their services.
- 43% of survey respondents stated that they were contacted rarely or never by school districts or the central DOE.
- 50% of survey respondents voiced a concern about the uneven playing field between District and private providers.
- Nearly one-third of survey respondents anecdotally stated that there was a need for more time to implement their programs, between the approval process and actual start date of services.
- One quarter of the respondents stated that the method of payment in place was problematic, indicating that SES is not viable financially for the smaller providers.

III. Services to English Language Learner (ELL) Students and Students with Disabilities

- Despite the regulations and guidance regarding the availability of SES to students with disabilities and ELL students, survey respondents indicated that they had little knowledge of the necessity to accommodate these populations. Half of the providers surveyed were not even aware of the composition of the students whom they were serving; several indicated that had they been informed of the need for services targeted towards these populations, they would have created services and staff around that need to accommodate these students.
- Surveys from providers indicated that less than half of the providers had services available for ELL Students and disabled students. The NYC DOE Annual Report of SES Providers sent to the New York State Education Department (NYSED) stated that 100% of service providers, including DOE and non-DOE providers provided appropriate services and accommodations and/or language assistance for these two populations. The statement that these two populations received appropriate services is put into doubt by AFC's report findings. Only 40% of survey respondents indicated that they had services available for ELL students and 37% of survey respondents indicated that they had services available for students with disabilities.
- More specifically, eight of the 47 total service providers who completed reports for the DOE wrote N/A or left blank the sections in which they were asked to report on the numbers of ELL students and students with disabilities that attended

their programs, raising the question of how these providers could have adequately served ELL students and students with disabilities.

A. ELL Students

Initial Survey

- 44% of responding service providers did not know whether or not they were providing services to this population.

Second Survey

- Nearly 60% of respondents stated they did not have services available for this population.
- Although five of the 12 (42%) survey respondents said that they had services available for ELLs, seven (58%) said that they had ELL students in their programs during the 2002-2003 school year, indicating that in at least two programs, ELL students were not receiving proper services. Of the seven providers who served ELL students, one provider (14%) indicated that it had only a few ELL students in their program, four providers (57%) indicated that 10% of the total number of student receiving services were ELL students, one provider indicated that 25% of the total number of students were ELLs, and one provider indicated that 60% of its students were ELLs.
- Of the five service providers who had services for ELLs, four (80%) had ESL/bilingual programs. Three of the five (60%) providers who had services for ELLs had tutoring programs in both reading and language arts and two (40%) had tutoring in language arts only. Two of the five (40%) providers had tutoring for ELLs one hour a day, two times a week, and the other three (60%) providers said the frequency of tutoring for ELLs varies. All five providers who had services for ELLs said that they had to hire additional staff to provide these services.
- The seven respondents who were not providing ELL services in their programs gave a wide range of answers as to why this was the case. Two of the seven providers (29%) stated that they did not provide services because there was not a demand for services by ELLs. Another two did not know why they did not provide services to ELLs. Of the remaining three of the seven providers who did not provided SES to ELLs, one indicated that the organization had a lack of resources, one explained that it was difficult to find ELL instructors with the proper training, and one indicated that the tutoring curriculum currently in place at the agency was difficult to change.
- Only 42% of the survey respondents indicated that DOE personnel informed them of their obligation to have the capacity to provided services to ELL students.
- Over half of respondents said that no personnel of the DOE had contacted them with referrals for ELLs.

B. Students with Disabilities

- Half of providers surveyed did not know whether or not they were currently providing services to students with disabilities.
- 44% of the providers surveyed indicated that there were not services available specific to the needs of this population.
- Nearly 20% of providers surveyed did not know whether or not they had services targeted for students with disabilities.
- Providers who either did not have services targeted for this population or were not aware of them, indicated that if they had been informed of the need for these services prior to the commencement of the program they would have made available accommodations and services suitable for students with disabilities.

Recommendations

I. Communication to Parents Must be Clearer

Survey findings indicate that many Title I eligible parents never received information on SES, or oftentimes, received it in an untimely manner, or in a language they could not read. Furthermore, it was often cited that the content of the parent information letters were inaccessible for the targeted population. Letters must be re-drafted to be parent friendly, and there must be better accountability to assure that the letters actually go out on time, and in the correct language that the parent speaks, and allowed for enough time for parents to make informed choices.

Parent outreach appears to have been inconsistent across New York City in almost every area according to survey respondents. Though this may be partially attributed to this being the first time SES were implemented, NYC can learn from mistakes by having better thought out planning and a longer timeline, with greater monitoring and accountability.

Another problem with communication was the hurried timeline in which the DOE had to implement the NCLB SES mandates. The New York State Education Department (NYSED) issued its RFP extremely late and so didn't even get the certified providers to the DOE until the beginning of the school year. Inexplicably, the same thing happened this past summer with NYSED not issuing its RFP until late July and having it due on August 15th, thus slowing the process of getting information to parents as soon as possible. Next year, we urge NYSED to send out the RFP in late Spring and have the providers chosen before the end of July so that the DOE and all other school districts in NYC can act more quickly and efficiently.

II. Cooperation between City and State Officials and Private Providers Must Dramatically Improve

Private providers indicated how difficult it was for them to enter schools and promote their services, how generally unresponsive the DOE was to them, and some respondents clearly felt that an uneven playing field had been created between private providers and DOE providers, pitting them against each other for students. It appears that greater responsiveness by the DOE to these private providers is in order. Without better cooperation the NYC schools may risk not enrolling thousands of eligible students and not offering all eligible students the panoply of choice of services that is available.

III. Services to the most at-risk users of SES, English Language Learner (ELL) Students and Students with Disabilities Must Be Uniformly Implemented in order for them to be properly served as required by the NCLB

Despite the regulations and guidance regarding the provision of SES to students with disabilities and ELL students survey respondents indicated that they had little knowledge of the necessity to accommodate these populations. The New York State Education Department (NYSED) is obligated under federal law to both certify a sufficient number of providers to serve these populations, and monitor that proper services are being offered and provided. It appears from our survey that few of the private providers knew about this obligation, or had implemented proper programs to serve these populations, though most indicated a willingness to do so if they had been so notified. This indicates a major problem with the NYSED process for choosing providers. NYSED needs to overhaul the administration of SES programs and to formulate a proposal for services that clearly indicates whether a provider can serve these populations and how they will do so. NYSED also needs to engage in effective monitoring to ensure that these services are actually being offered and provided. NYSED then must clearly state to parents which agencies can actually adequately serve these two populations.

For the private providers a willingness to provide services must be translated into actual provision of services, or a clear statement that the particular provider is unable to serve one or both of these populations.

The accuracy of the DOE's reporting to the State Education Department regarding services to these populations is questionable in that it asserts that 100% of these students were properly served, an assertion belied by our survey findings and anecdotal evidence to the contrary. NYSED must follow up with the DOE to assure proper provision.

English Language Learners and students with disabilities were seriously underrepresented in the total number of students receiving SES, indicating that the existence of real barriers (such as language) to receiving these services, requires further investigation and action both by the DOE and NYSED.

Part A: NCLB Overview

I. Introduction

Signed into law by President Bush on January 8, 2002, The No Child Left Behind (NCLB) Act of 2001 was touted as a way to increase the academic achievement of socially and economically disadvantaged students. The legislative authors stated that the new law, through stronger accountability for districts and states, increased options for parents, more flexibility and local control, and an emphasis on research based teaching methodologies, would bridge the achievement gap between disadvantaged and minority students and their peers. Changes wrought by the NCLB are now being hotly debated as its effects are now being felt. It is the most extensive reform of the Elementary and Secondary Education Act (ESEA) since ESEA was signed into law in 1965. This report discusses findings from surveys conducted by Advocates For Children of New York (AFC) to assess the implementation and effectiveness of one NCLB mandate: the provision of Supplemental Education Services (SES), provided for the first time in New York City during the 2002-2003 school year. As described below in a short overview of the NCLB, SES tutoring services are mandated by the NCLB for low-income[1] students who attend a school that have been designated a "School in Need of Improvement" (SINI) for two consecutive years.[2]

One of the main stated tenets of the NCLB is to increase district and state accountability for student achievement. To ensure that state performance standards are met as set out by the NCLB, schools must meet annual performance goals in order to avoid a range of state imposed interventions. Each state must establish its own definition of "Adequately Yearly Progress," (AYP) which is used to measure the achievement of schools and districts over time. This accountability system is meant to provide measurable objectives for all children and specific groups, such as English Language Learners (ELLs) and Students with Disabilities. The stated goal is to ensure proficiency for all students within twelve years.

Another of the stated central tenets of the NCLB is the expansion of parental choice. When a school fails to make AYP for two consecutive years, the district identifies it as a "School in Need of Improvement". Parents of students in Title I[3] schools identified for improvement will have the option to transfer to another public school in the district not in school improvement. Parents of low-income students attending Title I schools in their second year of improvement retain the option to transfer to a non-SINI but are also eligible to receive Supplemental Education Services (SES) for their children. However,

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[1] Low-income defined by fee school lunch eligibility.

[2] A SINI is a school that has failed to make AYP for three or more consecutive years. See Section II for further discussion.

[3] Title I provides assistance to high poverty schools to enable students attending those schools to meet challenging standards. See Title I Basics – www.emsc.nysed.gov/deputy/nclb/parentfacts.htm .

not all students that are eligible for public school choice are eligible for SES.[4] Both options continue to be made available until a school has made AYP for two consecutive years following its designation as a SINI.

II. What are Supplemental Education Services and who is Eligible?

Supplemental Education Services (SES) are extra academic services during off-school hours offered to low-income students that are attending schools that have failed to make AYP for three or more years. Services include tutoring, remediation, and academic intervention, and are provided free of cost to those who are eligible. The stated goal of SES is to increase the academic achievement of low-income students, particularly in the areas of reading, language arts and mathematics. Services, according to the NCLB, should be designed to assist eligible students in meeting the State's achievement standards. This report focuses on the provision of SES by private providers in New York City (NYC).

Low-income students attending Title I schools in their second year of improvement, in corrective action, or in restructuring – i.e. have failed to make AYP for three or more consecutive years – are eligible for Supplemental Education Services.[5] Thus, to be eligible for SES a student must meet low-income criteria[6] in addition to attending a school in its second year of improvement. This is different from the NCLB public school option which is offered to all students attending a school designated as an SINI, regardless of socio-economic status. If the request for SES exceeds the available funds designated for the program then priority is given to the lowest achieving students from low-income families.[7]

III. Federal Law, Regulations, and Guidance Pertaining to the Provision of SES and AFC Survey Findings

a. State Education Agency (SEA) Responsibilities

Under the NCLB the State is primarily responsible for identifying schools that are required to offer SES, as well as identifying eligible SES providers using an established set of objective criteria[8] consistent with the goal of improving the academic achievement of all[9] students to meet state standards. The SEA must provide annual notice to potential providers of SES of the opportunity to provide services as well as information regarding procedures for obtaining state approval. In consultation with the LEA, parents, teachers,

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[4] SES is available to students attending Title I schools identified an SINI who meet low-income criteria, whereas public school choice transfer is available to all students attending Title I schools identified as SINI.
[5] See table in Appendix A for further explanation of AYP and corresponding entitlements.
[6] See The NCLB Act of 2001, Section (1116)(e)(12)(A) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.
[7] Id., Section 1116(e)(2)(C).
[8] See Supplemental Educational Services Non Regulatory-Guidance, August 22 2003, p.5, Section C-1 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.
[9] Must include English Language Learners and Students with disabilities. See Final Regulations Section 200.46(a)(4) and (5).

and other interested members of the public, the SEA is to promote maximum participation by the providers to ensure that parents have as many choices as possible. In addition, the SEA is responsible for monitoring the quality and effectiveness of services delivered by approved providers[10], and for withdrawing providers that fail to increase the academic proficiency of students attending their program for two consecutive years. The SEA is also required to maintain an updated list of approved providers across the State, by school districts, from which parents can select.[11] In New York State the responsibility is up to the New York State Education Department (NYSED).

b. Criteria for Providers

In order for an SES provider to be included on the state approved list, the provider must agree to ensure that the instruction provided and content used by the provider are consistent with that used by the LEA and State, and are aligned with state student academic achievement standards. In addition, the instruction and content must be secular, neutral, and non-ideological. The provider must meet all applicable federal, state, and local health, safety and civil rights laws. The provider is responsible for providing parents of students receiving SES with information regarding the academic progress of their children, in a format and language that parents can understand.[12]

c. Local Educational Agency (LEA) Responsibilities

The local educational agency (LEA), which is usually a school district, must provide, at minimum, annual notice to parents about the availability of SES, including a list of geographically relevant SES providers, and a brief description of services, qualifications, and demonstrated effectiveness of each provider. The LEA in New York City is the New York City Department of Education (DOE), which is the largest school district in the country serving over 1.1 million students, nearly a quarter of whom are eligible for SES.

The LEA must also provide parents with the procedures and timelines necessary to obtain SES for their child.[13] In establishing a timeline for provider selection and service enrollment, LEAs must ensure that parents have sufficient time and information to make an informed decision. Although LEAs may establish a deadline using reasonable judgment in regards to time constraints, they may also allow rolling enrollment, as long as eligible students are served and priorities are respected. The LEA should work with parents to the greatest extent practicable to ensure that parents have ample information, time, and opportunity to benefit from SES. If requested, the LEA must also assist parents in selecting a provider. The LEA must apply fair and equitable procedures[14] for serving students if the number of students applying for services exceeds availability of services,

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[10] The standards and techniques used to monitor the quality of services must be made available to the public. See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p.13, Section D-1 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[11] See the NCLB Act of 2001, Section 1116(e)(4) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[12] Id., Section 1116(e)(5).

[13] See Appendix B for 2003-2004 Timeline.

[14] Priority goes to lowest-achieving students.

and must not reveal the identity of any students eligible for or receiving SES without the written permission of the student's parents.[15]

All information sent to parents should be in a uniform format and a language the parents can understand. In addition, the federal guidance recommends using additional avenues to disseminate *general* SES information, including newspapers, the Internet, and/or notices mailed or sent home. Specific information about services should be provided directly to parents to ensure sufficient time for them to select providers. [16]

In addition, the LEA is mandated to enter into an agreement with the provider that requires the LEA, in consultation with the parent and provider of choice, to develop a statement of specific achievement goals for the student, as well as how the student's progress will be measured, and a timetable for improving achievement. In the case of a student with disabilities, this plan must be consistent with the student's Individualized Education Plan (IEP). The agreement between the LEA and provider must also describe how the student's parent(s) and teacher(s) will be kept up to date on the student's progress, and provide for the termination of agreement if the provider is unable to meet such goals and timetables. In addition, the agreement must include provisions as to how the provider will receive payments for services from the LEA. The agreement also requires the provider to keep the identity of any student eligible for or receiving SES confidential, unless given written permission by the parent(s), as well as an assurance that SES will be provided consistent with applicable civil rights laws.[17]

d. LEA and SEA Responsibilities for the Provision of SES to Students with Disabilities and English Language Learner (ELL) Students

The LEA and SEA are responsible for ensuring that eligible students with disabilities covered under the federal Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973[18], as well as ELL students receive appropriate SES and necessary accommodations and/or language assistance, if needed.[19] In addition, the federal guidance states that an LEA may not discriminate against an eligible student with a disability or ELL student by failing to provide appropriate SES with necessary accommodations and/or language assistance. It further states that if no provider is able to make available the services with necessary accommodations and/or language assistance to an eligible student with a disability or ELL students, the LEA would need to directly

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[15] See the NCLB Act of 2001, Section 1116(e)(2) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[16] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p. 15-16, Section E-2. http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[17] See the NCLB Act of 2001, Section 1116(e)(3) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[18] IDEA entitles children with disabilities to a free, appropriate public education in the least restrictive environment appropriate to their needs. Section 504 of the Rehabilitation Act of 1973 bans discrimination on the basis of physical or mental disability in federally funded programs, such as NYC public schools. It is intended to level the playing field for people with disabilities by eliminating disability-related barriers so, for example, students can fully participate in school.

[19] See Final Regulations, sec. 200.46(a)(4) and (5) and 200.47(a)(4) and (5) http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html.

provide these services, with the necessary accommodations, either directly, or through a contract. In addition SES must be consistent with a student's IEP under Section 614 of the IDEA or a student's Individualized Educational Services (IES) under Section 504.[20]

Part B: Advocates For Children's Survey Framework and Respondents

This report discusses findings from surveys[21] conducted between January and August of 2003 by Advocates For Children of New York (AFC) to assess the implementation and effectiveness of SES in New York City. In addition to the initial survey which focused largely on implementation issues, a second survey was conducted during the summer of 2003 asking more targeted and in-depth questions to assess services available for ELL students.[22] These surveys contacted private state-approved SES providers who had a contract with the NYC Department of Education (DOE) during the 2002-2003 school year.[23] Some were for-profit corporations and some were not-for-profit corporations. Of the 21 SES providers who were contacted, there were 16 respondents from the general survey and 12 respondents from the second survey. Six other providers who had been certified by the state were also contacted but were found not to be providing services in NYC.[24] AFC staff spoke to the person at the agency who was identified by the agency as the person working on the provision of SES at their office.

In addition to the 21 private SES providers contacted by AFC, there were 22 Community School District Providers and four Centrally Operated Providers.[25] While non-DOE providers served only 12% of the total number of students receiving SES in New York City, DOE providers served 88% of the total number of students receiving SES. At the beginning of the survey process our agency had assumed that the majority of SES providers were private providers, either for-profit or not-for profit corporations. Our survey was not designed for the DOE providers and many of the questions were not applicable to them. One of the surprises in doing this research was that DOE providers served an overwhelming majority of students receiving SES. Our survey only discusses issues and barriers experienced by non-DOE private providers. Our report however, in specific sections that rely on the information provided by the DOE to the state in its Annual Report of SES Providers, discusses all providers, private and DOE. Private providers are referred to in this report by letter, i.e. "Provider A", to mask which provider made what comment as there was an almost universal concern on the providers' part that comments might endanger their contracts. A list of the providers who answered our survey can be found in Appendix E.

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[20] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p.7, Section C-4 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[21] See Appendix C for General Survey.

[22] See Appendix D for ELL specific Survey.

[23] AFC contacted only non-DOE service providers. In addition to the 21 outside providers who hold a contract with the DOE, there are 22 Community School District Providers and 4 Centrally Operated providers. See Appendix F for a complete list of NYC Providers.

[24] AFC initially contacted 27 providers from a preliminary list on the DOE's website. In contacting the 27 providers, we came to find that 6 of the providers who were approved by NYS chose not to sign a contract with New York City. See Section (D)(II)(b) of the report for further discussion.

[25] Both are operated by the DOE.

Part C: An Overview of Supplemental Educational Services in New York City During the 2002-2003 School Year

The data cited in this report regarding the number of students served come primarily from a Freedom of Information of Law (FOIL) request sent to both the New York City Department of Education (DOE) and New York State Education Department (NYSED) by AFC.[26] The majority of information requested through the FOIL was provided by the DOE in its Annual Report by SES Providers, which is completed by individual providers and sent to the NYSED as a comprehensive document.[27]

According to the DOE[28], there were 837 Title I public schools during the 2002-2003 school year. Of these 837 schools, 312 were required to offer Supplemental Education Services (SES) during this period.[29] There were a total of 243,249 students from the 312 schools that were eligible for SES. A total of 30,333 eligible families requested information, only 12.5% of those eligible for SES. Although the DOE does not report the total number of students who "received" SES during the 2002-2003 school year, they do report that there were no parent requests for SES that could not be met, which indicates that the 30,333 who requested SES received services. This is quite a difference from parents requesting information on school transfers under the NCLB; 220,000 were eligible for a transfer, 6,000 requested a transfer, and only a quarter of those (1,500), actually received a transfer during the 2002-2003 school year.[30] Of the 30,333 students who received SES services, 3,654 (12%) of them were English Language Learner students and 1,061 (3.5%) of them were students with disabilities.[31]

There were 47 total[32] SES providers in New York City during the 2002-2003 school year.[33] Of these 47 providers, 26 were run by the DOE[34] and 21 were non-DOE programs, consisting of for-profit and not-for-profit corporations. Of the 30,333 students receiving SES, only 12% attended outside (non-DOE) providers and the remaining 88% attended DOE programs.[35]

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[26] See AFC FOIL request to the DOE dated May 8, 2003 and Partial Response dated June 30, 2003.
[27] See Appendix G for sample performance summary (to be completed by provider) or go to www.emsc.nysed.gov/nyc/SES/SES.html#AnnualReport.
[28] See the 2002-2003 Annual Report by SES providers.
[29] These schools are also required to offer public school transfers.
[30] See http://www.gothamgazette.com/article/issueoftheweek/20030616/200/426.
[31] This extremely low proportion of students receiving SES services who are ELLS and disabled warrants further review.
[32] Includes DOE and outside providers.
[33] See Appendix F for complete list of providers.
[34] Run by community school districts or centrally operated.
[35] See 2002-2003 Annual Report of SES providers.

Part D: Survey Findings

I. Communication to Parents

a. NCLB Policy Regarding Communication with Parents of Eligible Students

Section 200.36 of the federal Department of Education's regulations states that throughout the school improvement process, the state education agency (SEA), local education agency (LEA), or school must communicate with parents of each child attending the school.[36] Communication may be directly through mail or e-mail, and through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

Section 1116(b)(6) of the No Child Left Behind (NCLB) Act of 2001 states that the LEA is to be "prompt" in providing parents with information regarding the identification of the school as a School in Need of Improvement (SINI)[37], including what the identification means, reasons for identification, and how the school compares in terms of academic achievement to others served by the LEA and SEA involved. Also to be included is what the SINI is doing to address the problem of low achievement as well as what the LEA and SEA are doing to assist the school. The notice is to also include information on how a parent can become involved in addressing the issue of low achievement, and most importantly, an explanation of the parents' option to either transfer his/her child to a non-SINI or obtain SES. According to the law, this information is to be provided in an "understandable and uniform format, and to the extent practicable, in a language the parent can understand."[38]

In addition, Section 1116(e)(2) states that the LEA is responsible for providing, at *minimum*, annual notice to parents of the following: the availability of SES; a list of approved providers within the LEA or within reasonable distance; and a brief description of services, qualifications, and demonstrated effectiveness of each provider. This section also notes that if requested, the LEA must assist parents in selecting a provider from the list of state-approved providers.[39]

According to the federal guidance on the implementation of SES, the LEA must be "reasonable" in establishing a timeline by which parents must request SES, ensuring that

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[36] See final regulations, Section 200.36 http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html.

[37] Also applies to schools identified for corrective action and restructuring.

[38] See the NCLB Act of 2001, Section 111 (b)(6) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[39] Id., Section 1116 (e) (2).

the parents have "sufficient" time and information to make an informed decision about requesting SES and selecting a provider.[40]

According to the DOE, there were a variety of mediums used to disseminate information on eligibility and SES program information, including two first class mailings, a backpack reminder flyer, regional information sessions, engagement of more than 20 community based organizations, materials provided for local PTA meetings, publicity in community and citywide newspapers, a chancellor's hotline, and the NCLB section of the Department's website.[41] The DOE asserted that the letters and phone calls were translated into ten languages and then appropriately sent to households speaking a language other than English.[42]

In addition, the DOE timetable[43] asserts a variety of dates that information was sent out or that meetings were held. During the week of September 17th and September 25th of 2002, they state that 250,000 SES eligibility letters[44] were sent out to Title I eligible parents in Title I eligible schools, which included a general overview of SES and the projected 2002-2003 timetable for SES.[45] During the following two weeks, between September 26th and October 11th, the DOE asserts that school-based, district-based, and citywide information/orientation sessions were held for Title I eligible parents, which included an overview of the federal No Child Left Behind Act of 2001 and SES, an overview of the New York State and New York City Provider Approval process, and the calendar for implementation of parent selection process and service delivery in the 2002-2003 school year. The SES selection letter, they assert, was sent to Title I eligible parents during October 15th and October 18th, which included a listing of approved providers with a brief description of services and the parent-provider selection form. Parents were given until November 27th of 2002 to submit the completed parent-provider selection form to the district.[46] During the week of October 21st and November 14th, eligible parents were to meet with providers, agree on collaboration, and complete the selection form together. Between December 16th and December 20th, parents were supposed to be notified of final approval.

Despite the reported efforts of the DOE outlined above, survey findings indicate that many Title I eligible parents never received information on SES, or oftentimes, received

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[40] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p. 16, Section E-3 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[41] See PowerPoint presentation on the Implementation of the NCLB, presented to the City Council Commission on Education on June 17, 2003.

[42] This assertion is from a PowerPoint presentation on the Implementation of the NCLB, presented to the City Council Commission on Education on June 17, 2003. However, the DOE website lists only 5 languages, in addition to English, in which SES eligibility letters are available (see http://www.nycenet.edu/nclb/ses.asp).

[43] See timeline, Appendix B or go to www.nycenet.edu/nclb.

[44] See Appendix H for eligibility letter or go to www.nycenet.edu/nclb.

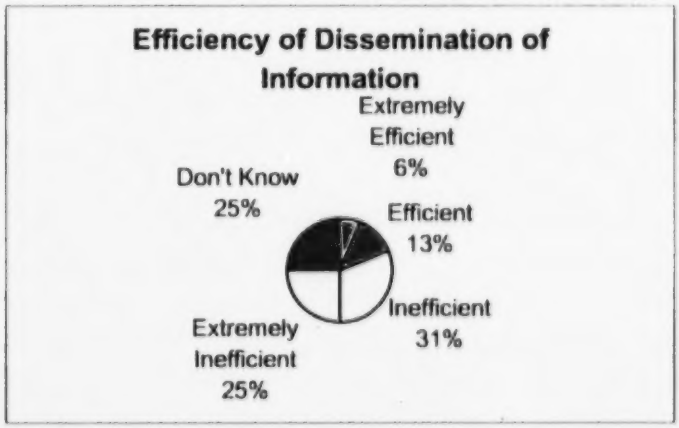
[45] In addition to English, parent letters were supposed to be sent out in Arabic, Chinese, Haitian, Russian, and Spanish to families who spoke the appropriate language. See http://www.nycenet.edu/nclb/ses.asp.

[46] This was an extended deadline; the initial deadline had been set for Friday November 15th. See timeline in Appendix B.

it in an untimely manner. Furthermore, it was often cited that the content of the parent information letters were inaccessible for the targeted population.[47]

b. How Well Did the DOE Disseminate Information to Parents of Eligible Students: Survey Findings

Although the law is clear about the responsibilities of the LEA in informing parents' of their student's eligibility in a timely manner that is clear and language appropriate, providers' indicated that such protocol was not followed consistently. From the evidence offered by respondents it appears that poor parent outreach was one of the main barriers to efficient service delivery during the 2002-2003 school year. Fifty-six percent of survey respondents stated that the districts were either inefficient or extremely inefficient in their dissemination of information to parents regarding the availability of SES and program options. Nineteen percent of survey respondents felt that the districts were efficient or extremely efficient in their dissemination of program information. Twenty-five percent of survey respondents did not have a sense of whether or not the districts adequately followed through with their responsibilities.



Numbers reported by the DOE[48] further support survey respondents' assertions concerning the dissemination of information to parents. Of the 243,249 students eligible for SES, 30,333 requested information on the program, only 12.5% of the total number eligible for services.[49]

When asked for additional comments or concerns regarding the implementation of SES, over two thirds of survey respondents anecdotally referred to problems surrounding parent outreach. Survey respondents regularly cited the timeliness and consistency of information dissemination, overall publicity of SES, the language/content of student

[47] See Part B, Section (I)(a) of report for discussion.
[48] See 2002-2003 Annual Report.
[49] The annual report does not report on numbers receiving SES but states that out of the 30,333 who requested information, all were approved for services, and there were 0 parent requests that could not be met during this reporting period. Therefore, we assume that 30,333 received SES during 2002-2003.

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eligibility letters, and disorganization at the administrative level, as areas in need of great improvement.

Parent Outreach

Over 80% (13 out of 16) of survey respondents indicated through anecdotes that they did not think that parents were sufficiently informed about the availability of SES and encountered many parents whom had heard about the program through other parents or service providers, but had never received eligibility letters from the district. In discussing the areas of SES implementation most in need of improvement, Provider V stated that the intention of SES is that the original power is in the hands of the parents, but due to poor outreach and distribution of information, it did not happen that way. This provider noted that the program was not organized well enough to reach the intended population, and because of this, the person was not sure whether or not they would apply to provide services during the 2003-2004 school year. Provider V stated that their agency had received many calls from parents that had been referred to their program in error[50] and noted that SES would have been a wonderful program if parents had gotten the information they needed.

Provider L, whose respondent also works at a GED program for low-income adults in a mainly Spanish-speaking neighborhood, noted the failure of two districts in particular to distribute information on SES, stating that none of the parents in their program knew about SES. Provider L said they made many failed attempts to contact the district liaison and when they finally did reach someone, they were told that the parents would have to contact their child's school to get information.

Provider S and Provider T both said that they had panicked parents calling at the last minute who had never received any information regarding the availability of SES, inquiring as to how they could obtain services for their children. Provider S estimated that 60% of the parent phone calls came as a response to an article in the New York Times.[51] Similarly, Provider M, who found the SES program implementation to be a confusing process from the top-down, said that they had parents calling at the "eleventh hour", even after the deadline for applications had been extended. Because of the concentrated timeframe they were working within, they found the whole process to be difficult. Provider M also mentioned that the enrollment process was confusing for parents, and said that many parents were not informed as to what they were to bring with them to the provider, where the providers were actually located, and who to contact from the list of providers, which listed out-of-state numbers for some of the larger programs. They stated that it is because of the disorganized efforts of some districts that more students eligible for SES were not receiving services.

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[50] Parents were to be provided with list of providers within LEA or nearby the LEA. Provider V said that many parents that contacted them were far from their zone.

[51] Goodnough, Abby. "Free Tutoring Fails to Draw Many Students." New York Times, Metro Section: Friday, November 15, 2002.

Both Provider E and Provider G indicated that there needed to be a more consistent distribution of information amongst the school districts in NYC. Provider E said that while some districts made an excellent effort to inform parents of their child's eligibility for SES others did not.[52]

Although LEAs are not mandated by law to take further action to promote SES beyond providing parents of eligible students with notice of eligibility, list of providers, and procedure and timelines applicable to enrollment, the federal guidance does suggest that that LEA's may want to consider multiple avenues for providing general information about SES, including newspapers, internet, or additional notices sent home.[53] According to several survey respondents' anecdotes, not only did some districts fail to follow the basic protocol for informing parents of eligible students about the availability of SES, but the LEA also failed to adequately publicize the SES program in general.

Provider L stated that the little publicity that the SES program did receive was poor, citing the information hotline on a news segment as proving to be of no assistance and the promotion of SES via-internet which as they pointed out is inaccessible to many of the low-income households that may not have access to the internet. Provider L also indicated that they had not been informed of the provider fairs that took place in New York City. Provider C attributed the low parent turnout at the few provider fairs held previous to the commencement of the SES program to the fact that that overall, parents lacked a good understanding of what SES is.

Provider O, who felt that the overall implementation of the SES program was haphazard, did not depend on the districts for publicity about their program. Instead they held parent meetings at community centers to do outreach for their program. From their perspective, district efforts were "insensitive" to community needs. Similar to Provider O, Provider P took it upon themselves to do outreach to parents. Provider K indicated that most of the outreach done was a result of parent advocacy as opposed to district efforts.

Unlike several of the other survey respondents, Provider P had an overall positive experience in gaining interest in their services because they were already working with many of the students eligible for SES. They attribute their success in numbers attending to the fact that they were already in known in the communities that had high numbers of students eligible for SES. "The response has been overwhelming," stated Provider P, noting that the only limiting factors have been a shortage physical space to hold the program and understaffing. Provider P also attended two provider fairs.

Content/Language of Eligibility Letters and SES Information

Although the law makes clear that information sent to parents is to be in an "understandable and uniform format, and to the extent practicable, in a language the

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[52] See Appendix I for a breakdown of number of students eligible for SES versus the number of students who received SES per district.

[53] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p.15, Section E-2 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

parent can understand,"[54] survey findings indicate that this protocol was not implemented. Over one third (6 out of 16) providers anecdotally referred to the eligibility letters[55] as inaccessible to the population it was intended to reach. Provider L noted that Medicaid letters are between the 4th and 6th grade reading level and that the SES letter was at a much higher grade reading level, but aimed at the same general population. Provider P stated that the SES student eligibility letters were too complicated for parents to understand.[56]

Provider L said that both the English and Spanish letters are very lengthy and confusing in general. Provider O echoed this sentiment in stating that the reading level of the student eligibility letters was "too high." Similarly Provider K and Provider G noted that the application for SES was not well designed for the population it was intended to serve, citing the content as text-heavy and not user friendly. Provider S agreed that the eligibility letters were difficult to absorb, particularly if you are not familiar with the program. They said that the letters would be easy to throw away if you did not have a firm understanding of what SES is. Provider S partly attributes the low turnout of students for SES to this fact.

II. Programmatic Issues

a. NCLB Policy Regarding the Cooperation of the SEA, LEA, and Providers

Section 1116(e)(4)(A) of the NCLB Act of 2001 states that the SEA is to work with LEAs, parents, teachers, and other members of the public to promote maximum participation by providers to ensure that parents have as many options as possible.

Furthermore, the federal guidance on SES suggests ways in which the LEA can ensure that information on SES providers (non-DOE) is made available to parents, such as asking the providers to give the LEA stamped envelopes containing information on the program which the LEA can send to parents of eligible students[57]; hold an "open house" of SES providers for parents of eligible students to attend; or include information about SES providers in school newsletters.[58] In addition, the guidance states that an LEA may in no way ban, or limit approved SES providers from promoting their services. It also states that an LEA should provide logistical and program information to providers to ensure that advertising includes accurate information on procedures parents must follow in order to obtain SES. Most importantly, the federal guidance states that:

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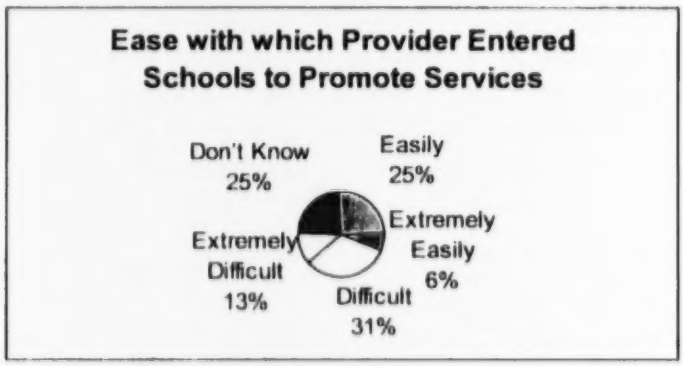
[54] See the NCLB Act of 2001, Section 1116 (b) (6).
[55] See Appendix H for eligibility letter.
[56] AFC Staff used the Microsoft Word Readability Check to determine the reading level of the SES student eligibility letters, which were found to be at a 12th grade reading level.
[57] This is suggested because LEAs are not permitted to disclose the name or information on students eligible for SES. See Non-Regulatory Guidance, August 22 2003, p.20, Section F-8 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.
[58] Id. Section F-8.

> Such coordination should ensure that providers have ample time to market their services and that parents are able to make informed choices of supplemental educational service providers.[59]

Despite this, at least half of the survey respondents (8 out of 16) anecdotally indicated that there were serious barriers to promoting their services, as well as an apparent unwillingness of the DOE to work alongside them. The anecdotes provided in the following section highlight some of the issues surrounding program implementation, which several providers indicated were a barrier to providing the most effective services in a timely manner.

b. Cooperation Amongst the SEA, LEA, and Providers: Survey Findings

Seven of the 16 (44%) survey respondents found it difficult or extremely difficult to enter schools in efforts to promote their services, while five (33%) survey respondents found it easy or extremely easy to go into schools to promote their services. A quarter of providers responded that they did not know. Only five of the 16 (31%) survey respondents stated that they were frequently contacted by school districts or the DOE with referrals while seven (43%) responded that they were contacted rarely or never. A quarter of providers responded that they did not know the frequency with which they were contacted by the DOE with referrals.



[59] Id. Section F-10.

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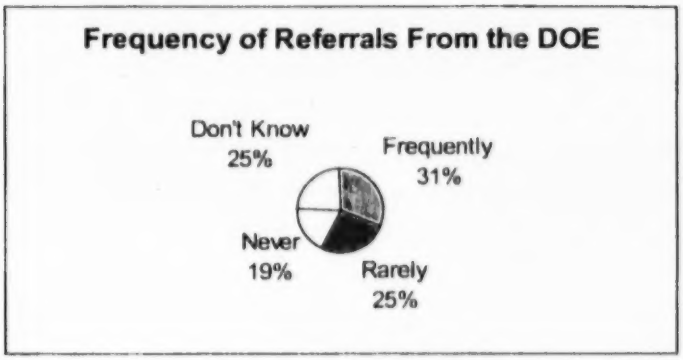

In addition to survey responses, several providers anecdotally expressed the difficulties they dealt with in implementing their programs in the face of the poor communication between the SEA, LEA, and providers, as well as the uncooperative attitudes of the school districts and administrative personnel. Contrary to what the guidance states in regards to the LEA's role in cooperating with non-DOE providers who wish to promote their programs[60], some of the survey respondents indicated that they felt as though they were not given equal footing with district-administered programs.[61] At least 50% (8 out of 16) SES respondents anecdotally voiced a concern about the uneven playing field between district and private providers, and from their experience felt as though there were particular instances which clearly indicated a self-interest amongst the districts. Provider G, who said that they had an easier time implementing their program because they had worked with the DOE previously, stated however that most of the kids were attending district run programs. Provider G emphasized that the DOE and the private providers need to work cooperatively, rather than cultivating the us vs. them mentality that had been present. Provider E echoed this sentiment by mentioning the competitive nature between the district and non-district run programs.

Numbers reported by the DOE[62] support the survey respondents' anecdotes. According to the DOE, outside SES providers served only12% of the total number of students receiving SES during the 2002-2003 school year. DOE providers served 88% of the total number of students receiving SES. In 16 of the 22 districts in which the district also served as an SES provider, 90% or more of students receiving SES in each particular district, received them from the district-run (DOE) provider; in an additional four districts, 80% or more of the students receiving SES, received them from the district provider.[63] This difference of provision of services primarily by DOE providers is interesting. Further research is suggested to determine how or if other large urban school districts have set up their own SES provider services, and if these providers served the bulk of students. The main issue that warrants further investigation from these survey

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[60] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p. 21, Section F-10 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[61] See discussion in Part B in regards to DOE versus non-DOE providers.

[62] See 2002-2003 Summary Report of SES Providers.

[63] Also, important to note that the New York City Learning Academy and Success Prep (Centrally Operated Providers – i.e. DOE) served a disproportionate number of students in the districts in which they worked.

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results is whether the DOE did not allow for an even playing field between DOE providers and non-DOE providers. Parents should be offered a true choice of all types of providers. If there is was a bias this must be corrected in the current year and the years to come.

District's Willingness to Work Alongside Private Providers

Provider K, who was reluctant to discuss programmatic issues for fear of losing funding, said that overall, implementing the SES program has not been an easy process and that the process could clearly be improved, particularly in reworking the transmittal of information from district to provider to parent to provider. Provider K emphasized the need for the process to be centralized because of the difficulty in dealing with individual districts, each of who seemed to be following their own protocol. Provider K referred to the process of working with the DOE as a "catch 22" because if a provider was to complain about the way SES coordination has been handled than the provider is not looked favorably upon by the DOE, but if the provider does not assert itself then it runs the risk of not getting what it needs to properly serve students. Provider G, who had an easier experience than other providers because of having worked previously with the NYC school districts admitted that there was still room for improvement, stating, "there are lots of bumps in the road that need work." Similarly, Provider H noted that this has been a learning process for everyone involved.

Provider L, speculated that the districts were not being forthcoming with sites, possibly because they were trying to hold on to the money for themselves, which they said, "flies in the face of the intent of the law." It was at this time of this conversation in January when providers were to have already begun services, according to the DOE's timetable.[64] Provider L was still awaiting sites in the schools to provide their services. They said that they contacted every superintendent about possible sites and didn't hear back for over a month, preventing them from beginning their services in a timely manner.

Provider L also cited a PTA meeting they attended in which the provider selection form was already filled out for the parents with a district-run program selected as the provider, supporting their claim of bias by the district for district-run programs. They stated that non-DOE programs were not getting equal footing. Similarly, Provider K assumed that their program was not marketed and noted that parents had informed them that they were being steered away from private providers. Provider M who did not think they had a large sampling of students indicated that in at least one district, the schools were clearly interested in keeping the students in their own programs.

Provider T, who works with students on-site at schools, stated that principals and districts were reluctant to participate with them. Furthermore, it was their view that the process of getting sites at schools was very political and really was an issue of whether or not the principal wanted the program at the school, fearing that providers might take up to much space. From their experience, Provider T believed that districts were trying to sabotage outside providers in order to keep students within their own programs.

[64] See Appendix B for timeline.

Provider S, who operates within the schools as well, stated that they have gotten "zero" support from the districts and schools and noted that they have put up barriers to prevent them from providing SES such as withholding available classroom space which is their only limitation to capacity. In addition, they said that they had very little recourse as a private provider and found this frustrating because they could make a big difference in helping schools achieve Adequate Yearly Progress (AYP) if the schools would take partnership. They said that the principals and superintendents seemed to be instructed not to work with the providers.

Provider P differed from many of the providers and felt that problems were attributable to the initial implementation of SES and that there were bound to be glitches, and considering the newness of it all, the city had done a great job. Overall, they felt sympathetic to the challenges that the city has faced in implementing this program and admitted that the reorganization would make it even more difficult. Provider P also felt that the districts have been great advocates for their program, and noted that the law is clear that the DOE is not supposed to take positions on promoting particular providers, and they are required to be public about what options exist.[65] Provider P said they had an overwhelming response and were not able to serve all that requested their services. They attributed the good turnout partly to the fact that many of the students eligible for SES were already attending their program prior to the implementation of SES.

The federal law is meant to provide access to all options available for students. These comments from providers indicate the need for a review of these procedures. Though services by the district providers may have been of the highest quality, parents should have access to all choices available which appears, in at least some districts, not to have been the case in the first year of SES implementation in NYC.

Survey respondents anecdotes regarding the lack of cooperation amongst the SEA, LEA, and providers, is further illustrated in the discussions with state approved providers who chose not to sign a contract with the DOE. AFC staff became aware of this contingent during the initial round of phone calls using the list of providers posted on the DOE website in January of 2003. Although there were only 21 non-DOE service providers during the 2002-2003 school year, at the commencement of the survey, the list used to contact providers listed 27 programs. Six of the 27 providers initially contacted were approved by New York State for the provision of SES but chose not to sign a contract with NYC for an array of reasons.[66]

Non-provider 3, who has a contract with several other districts in New York State, backed out of a contract with the DOE because Provider 3 stated, "it didn't make sense

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[65] See Supplemental Educational Services Non-Regulatory Guidance, August 22, 2003, p. 21, Section F-10 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[66] The anecdotes in this section are not part of the general survey sample and thus are limited to this section of the report – they do not account for any percentage of the statistics throughout the report since they do not hold a contract with the DOE. We have labeled them non-providers to distinguish them from the other survey respondents.

morally." Their concern was that even though the amount allocated to each student exceeds the cost of services, the surplus was not used to provide the student access to more than one provider, which, according to their experience with other districts, is common practice.

Non-provider 1 stated that "unreasonable" requests were made of them and they therefore did not sign a contract with the DOE even though they were approved by New York State.

Non-provider 5 said that due to some of the same difficulties described by other service providers, they chose not to sign a contract with the DOE, but they did provide SES in other districts in New York State.

Two other providers did not go forward for what appears to be administrative reasons. Non-provider 2, who works with other school districts in providing SES, was approved by the state but chose not to sign a contract with NYC because of capacity issues. They noted that SES would be most effective if parents and providers had direct communication. Non-provider 4, who is providing SES in schools districts outside of NYC, did not sign a contract with NYC because they were unable to meet the deadline.

Relation of Information between the SEA, LEA, Providers, and Parents

Twenty-five percent of the survey respondents anecdotally indicated that communication needs to be improved between the SEA, LEA, providers, and parents. Provider B, who has had difficulty accessing administrative personnel, noted that the DOE needs to develop a much more "friendly" system, emphasizing the communication problems they have experienced. Provider I agreed, stating that their biggest problem has been receiving information from the state down, citing the poor communication between the state and the city DOE, as well as the long delays in receiving programmatic information. Provider B also indicated that the SES contacts at the DOE need to ensure that the information they are receiving from providers, particularly when it is a complaint, is relayed to higher ups stating, ("they might understand our needs, but their bosses need to be involved as well").

Two of the providers stated that the enrollment process would be more efficient if the providers and parents had direct communication versus having the districts serve as an intermediary. Provider E described the problem as an issue of communication from the top-down from district to schools to parent – i.e. if the district fails to distribute letters and information in a timely manner then the school is unable to follow through, as are the parents. Provider K echoed this by stating that the enrollment process would be most effective if parents and providers had direct communication.

In addition, at least two of the 16 providers anecdotally indicated that they were oftentimes unable to follow through with parent requests because of missing information. Provider S noted that contacting students was very difficult because parents did not always fill out that section of the selection form, and although they got to most parents,

they felt that the districts could have facilitated the process a lot better. Provider E also said that they had difficulty in contacting the parents of students who were enrolled to receive SES from them because they were provided with minimal information on the students, limited to name, date of birth, and school. Provider E indicated that not all of the students enrolled for their services received them, particularly in instances where the student moved. They depended on their personal outreach staff and the ATS system to track students who could otherwise not be reached.[67]

Timetable for Program Implementation

At least five out of 16 survey respondents anecdotally mentioned the need for there to be a more time to implement their programs, between the approval process and actual start date of services. Provider N, who hopes to see the SES program improved during the following school year by learning through the past year's mistakes, said that the districts need to provide the information to both parents and providers on a much more timely basis so as to more effectively deliver services, clearly stating that it is difficult to adequately prepare as a provider if working within such a concentrated timeframe.

Provider T, who works on-site in the schools, said the time frame in which the providers were required to work within was "unrealistic," particularly in terms of planning for the services. They also noted that they had not time to develop relationships with the schools with which they would be working. Provider T suggested that provider information get out earlier so that they will be able to better serve students, noting that there was no time between notification of approval for SES provision and commencement of services. Overall, they noted that implementing SES has been a huge undertaking lacking preparation and that in particular the contract process was daunting.

Similarly, Provider G and Provider O said that the timetable for enrollment needed to be extended for the following school year. Provider H and Provider S, who felt that they had time working against them, noted that they had a small window of opportunity to present their program and that they look forward to earlier outreach next time around so that parents could be better informed of their program.

In addition to the survey respondents concerns about the timeframe in which they were given to implement their programs, a recent call from a SES provider further highlights the current timetable as problematic. At the end of June 2003, we received a call from a provider from the 2002-2003 school year who was concerned about whether or not they would have a contract for the following school year to provide SES because they had not received a Request for Qualifications (RFQ) from the state education department. The application for prospective providers for the 2003-2004 school year did not begin until July 25, 2003 and the deadline was August 15, 2003.[68] It is important to note that school commenced on September 8, 2003 and therefore little time was given by NYSED for the

[67] These examples also cast in a questionable light the data reported by the DOE to the state that everyone who requested SES actually received these services.
[68] See the 2003-2004 timeline in Appendix J.

DOE to gear up its outreach efforts. Parents are likely to bear the brunt of this, with a very short timeline (October 15th, 2003) for them to select a provider.

System of Payment

Section 1116(e)(3)(D) states that the agreement between an LEA and provider must contain provisions with respect to the making of payments to the provider by the local educational agency.[69] At the time of the survey, the majority of the providers were unable to comment on the ease with which they have been reimbursed for their services because they had not yet reached the invoice period for the first quarter. However, four of the 16 respondents who completed the survey at a much later date were able to comment on this issue, and stated that the method of payment in place was problematic, indicating that SES is not viable financially, for the smaller providers.

Provider C referred to the business side of SES as a "crap shoot", explaining that the district only pays for attendance, thus if there are students who do not show up then the provider does not receive payment. Similarly, Provider K said that the means of payment in place – i.e. paying for attendance – is not viable for the providers, who run the risk of losing a significant amount of money. Provider C stated that this system poses a major problem for non-DOE providers, and provides districts with an upper hand, giving them an incentive not to promote outside SES providers. Provider C suggested that supplementary funds resulting from students who did not attend the programs be equitably distributed between DOE and non-DOE programs.

Provider B voiced concern about there not being a system in place for payment at the time of our discussion. They were very uncertain about whether or not they would be even be paid stating that had been told that they would receive payment "eventually". Similarly, Provider E said that they have been submitting invoices for months and still had not received any money at the time of our survey. The representative stated, "If they (the districts) continue in that fashion, this is not a feasible program."

III. Services to English Language Learner (ELL) Students and Students with Disabilities

a. NCLB Policy Regarding the Delivery of Services to Students with Disabilities and ELL Students

The NCLB federal regulations and guidance state that the SEA and each LEA are responsible for ensuring the availability of services to students with disabilities under the IDEA and Section 504, and ELL students.[70] However, the federal guidance states that

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[69] See Section 1116(e)(3)(D) of the NCLB Act of 2001 http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[70] See Final Regulations, section 200.46 and section 200.47, (4) and (5) http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html. Also see Supplemental

although the appropriate services with necessary accommodations must be made available to these populations, not all providers are required to be able to serve them. If no provider is able to serve these populations, the LEA must provide these services, with necessary accommodations, either directly or through a contract.[71]

In addition, the federal guidance states that an LEA may not discriminate against students with disabilities by failing to provide appropriate SES with necessary accommodations. Furthermore, in the case of students with disabilities, SES must be consistent with a student's IEP under Section 614 of the IDEA or a student's Individualized Services under Section 504.

Similarly, Section 1116(e)(3)(A) of the NCLB Act requires the LEA to develop, in consultation with the parent(s) and provider chosen by parents, a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement that, in the case of a student with disabilities, is consistent with the student's individualized education program (IEP) under section 614(d) of the Individuals with Disabilities and Education Act.[72]

This is particularly important in NYC, the largest school district in the nation, with 145,000 students age 5-21 receiving special education services. Furthermore, there are approximately 150,000 ELL students in the NYC school district. Together these two populations make up approximately 25%[73] of the NYC school system. However, in the provision of SES they are strikingly underrepresented, as documented below.

Despite the regulations and guidance regarding the availability of SES to students with disabilities and ELL students, many service providers surveyed indicated that they had little knowledge of the need to accommodate these populations, even though the law is clear on the need for such services to be given in a school district. Eight of the 16 providers surveyed were not even aware of the composition of the students whom they were serving and several of them indicated that had they been informed of the need for services targeted towards these populations, they would have created services and staff around that need to accommodate these students. In the majority of cases when a provider did describe services targeted towards this population, the services were more general to the entire programmatic philosophy of the program, such as individualized learning and multi-sensory approaches, as opposed to specific services designed to accommodate students with disabilities and ELLs.

Educational Services Non-Regulatory Guidance, August 22 2003, p.7-8, Sections C-4 and C-5 http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[71] See Supplemental Educational Services Non-Regulatory Guidance, August 22 2003, p.7-8, Sections C-4 and C-5. http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc.

[72] See the NCLB Act of 2001, Section 1116(e)(3)(A) http://www.ed.gov/legislation/ESEA02/pg2.html#sec1116.

[73] ELLs make up approximately 15% of the school system, and students receiving special education services approximately 11%--there is of course some overlap between the two populations (i.e. ELLs receiving special education services), the exact percentage of which we are not aware.

a. How well were ELL Students and Students with Disabilities Served: Survey Findings

According to the DOE, there were 3,652 ELL students and 1,061 students with disabilities that were approved for SES, accounting for only 12% and 3.5% of the total number of students receiving SES. These percentages are significantly below the general population average, particularly for students with disabilities, who make up 11% of the school population.

At least four of the 16 providers surveyed anecdotally reported that had they been informed of the need for accommodations for ELL students and students with disabilities, they would have built services around these populations. Provider E and Provider H noted that they received no information from the districts or the DOE relating to student profiles and therefore had difficulty planning for services targeted towards those populations. Both providers indicated that had they been informed of such a need, would have hired staff to accommodate these needs, but also stated that the process would have required notice in advance. Provider O, who felt that the overall process of SES has been uncoordinated, echoed the need for obtaining students report cards and IEPs prior to the commencement of services. Provider O noted that logic would dictate this would happen in advance, but unfortunately, it was not the case.

Provider S also felt it was difficult to address the particular needs of a student if they were not given student information prior to the commencement of services. Provider S had no official student profile data from the districts, including IEPs, which Provider S believed was standard practice with the other districts in which it was providing SES. Provider S also noted that it did not receive any information on the makeup of languages of students enrolled in their program, and although they had requested demographic information from districts on numerous occasions, no information had been provided at the time of our survey.

Despite the fact that only 40% of survey respondents said that they had services available for ELL students and 37% of survey respondents said that they had services available for students with disabilities, 100% of service providers, including DOE and non-DOE providers as reported in the Annual Report of SES Providers to New York State stated that these two populations received appropriate services and accommodations and/or language assistance.[74] It is important to note that the state guidelines for reporting on these two populations, mandate that a provider check either "successful" or "unsuccessful", and "successful" indicates 100% success in providing appropriate SES for these populations. Clearly this is an area for further investigation and review as the information in the DOE report to the NYSED differs markedly with the survey findings.

Furthermore, eight of the 47 providers (DOE and non-DOE) who reported in the Annual Report of SES Providers to New York State, either wrote N/A or left blank the sections in which they were asked to report on the numbers of ELL and students with disabilities that attended their programs. How a service provider could be providing appropriate services

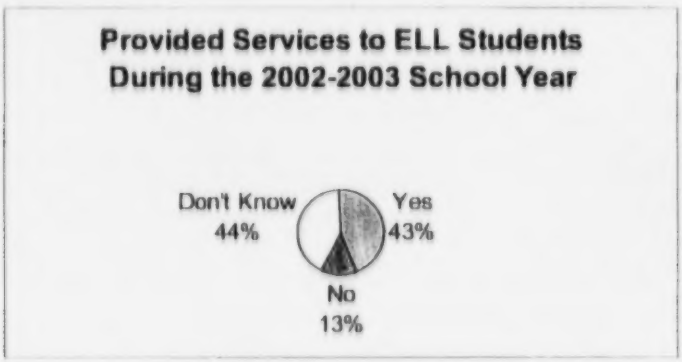
[74] See 2002-2003 Annual Report of SES Providers. See Appendix K for sample report, 7-9.

to ELL students and students with disabilities, if they report to be unaware of how many of these students were indeed attending their programs, is an unanswered question and ripe for further investigation.

ELL Students

Initial Survey

Only fifty-six percent (nine out of 16) of providers surveyed were aware of whether or not they were currently serving ELL students. Of these nine providers, seven were providing services to ELLs and two were not, 44% and 12% respectively.



Second Survey

Because the initial survey did not adequately address issues specific to ELL students and SES, we developed a follow up-survey with questions targeting the delivery of services to these students. Again we contacted all 21 SES providers. We received responses from only 12.[75] Thus not all of the initial survey respondents participated in the ELL follow-up survey.[76]

Services Available to ELLs

Only five of the 12 (41.7%) survey respondents said that they had services available for ELLs. Of the five service providers who had services for ELLs, four (80%) had ESL/bilingual programs; three (60%) had tutoring programs in both reading and language arts programs; two (40%) had tutoring in language arts only; two (40%) had tutoring for ELLs one hour a day, two times a week; and three (60%) indicated that the frequency of tutoring for ELLs varies. All five providers who had services for ELLs indicated that they had to hire additional staff to provide these services.

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[75] Percentages based on respondents from second survey.

[76] Sixteen out of the 21 providers contacted responded to the initial survey as compared to only 12 respondents in the second survey. Thus cannot compare percentages from the two surveys.

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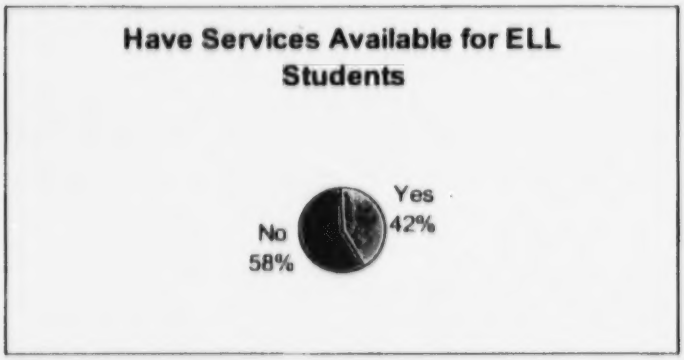

Although only five of the 12 (42%) survey respondents said that they had services available for ELLs, seven (58%) said that they had ELL students in their programs during the 2002-2003 school year. This is troubling as it indicates that there is some proportion of ELL enrolled in SES who is not receiving appropriate services. Of the 7 providers who had ELL students in their programs, one (14%) said that they had a few, four (57%) said that 10% of their total number of students were ELLs, one said that 25% of their total number of students were ELLs, and one said that 60% were ELLs.

One of the 12 survey respondents said that they did not serve any ELLs and four (33%) did not know whether or not they served ELLs.

Of the 12 survey respondents, seven (58%) said they planned to expand the services available and four (33%) said that they did not plan to expand their services to accommodate ELL students. One provider was unsure of its intention to expand services. Of the seven that said they had intentions of expanding the services available for ELLs, four (57%) said that they would definitely do so and three (43%) said that they would if the need arises.

Of the five survey respondents who provided services to ELLs, one (20%) provider said that they had only one person providing ELL services, two (40%) said that they had several, and one (20%) said that they had many. One (20%) provider said that they did not know how many staff members were actually providing the ELL services. Four of the five (80%) providers who said that they had services for ELLs said that there was always at least one staff member with these qualifications available. One (20%) provider did not know how many staff members with these qualifications were available at any given time.

The seven respondents who were not providing services to ELLs offered a wide range of reasons as to why this was so: two (29%) of the seven did not provide services because there was not a demand for services for ELLs; another two were not sure why they did not provide services to ELLs; one indicated that the organization lacked resources to do so; one explained that it is difficult to find ELL instructors with the proper training; and one cited the difficulty in changing the program's existing tutoring curriculum to accommodate ELLs.

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Communication with Parents of ELL Students

All 12 surveyed providers indicated that they had bilingual staff. Ten (83%) of these 12 providers had a bilingual English/Spanish staff, and indicated that if non-English speaking students and parents wanted to contact them about receiving SES, they would simply contact them by the normal means.[77] One provider who had bilingual Spanish/English staff also had another language capability (although did not indicate which language) and one provider claimed to have a bilingual staff but was not aware of which languages were spoken by its bilingual staff persons.

One provider indicated that if a non-English speaking person wrote a letter to their organization in their native language, the organization could have it translated into English. Two (17%) respondents indicated that all inquiries and applications for SES go through the Department of Education. Seven (58%) survey respondents explained that some of their materials, including learning materials, publicity materials, and letters to parents, were translated into a language other than English.

When asked how often parents of eligible ELL students contacted their organization, five of the 12 (42%) did not know; one provider (8.5%) indicated that it was contacted "often"; one indicated that it was contacted "somewhat often"; three (25%) said "not that often"; and two of the 12 (17%) indicated that they had not been contacted by parents of eligible ELLs at all.

When asked why the providers thought parents contacted their organization as little or as often as they did, there were several responses given. Three providers (25%) cited a lack of awareness of available services. One provider said that registration for SES is low across the board and not just among ELLs. Another said that he thought that parents expect all people who are in charge of their child's education to speak English, and so if the parent can't speak English, they are hesitant to contact a tutoring organization. An additional response was that the particular provider in question did not actively recruit eligible ELL students and therefore did not hear from parents that often.

Communication with NYSED and the DOE in Regards to Requirements for the Provision of Services to ELL Students

Five of the 12 (42%) survey respondents said that someone from the district or DOE had told them about the provider's obligation or ability to provide services for ELLs. Four (33%) providers said neither the district nor the DOE told them about such requirements, and three of the 12 (25%) survey respondents said they did not know whether or not the district or DOE had told them about requirements to have services for ELLs. When asked whether or the requirements to provide services to ELLs came up during the state approval process, three of the 12 (25%) said it did, 2 of the 12 (17%) said it did not, and seven of the 12 (58%) survey respondents said they did not know whether or not the topic came up during the approval process. These findings are disturbing given the clear

[77] Ie. A parent would call and speak to a bilingual employee, if available.

dictates of NCLB of the need for the state to assure that provision of services to ELLs occurs.

Over half of respondents (7 out of 12) said that the school district or DOE had not contacted them at all with referrals for ELLs. Of the three providers who did receive referrals from the DOE, one provider said the school district or DOE contacted them occasionally with referrals; and two said the school district or DOE contacted them often with referral. Two out of the 12 providers said they did not know how often they had been contacted.

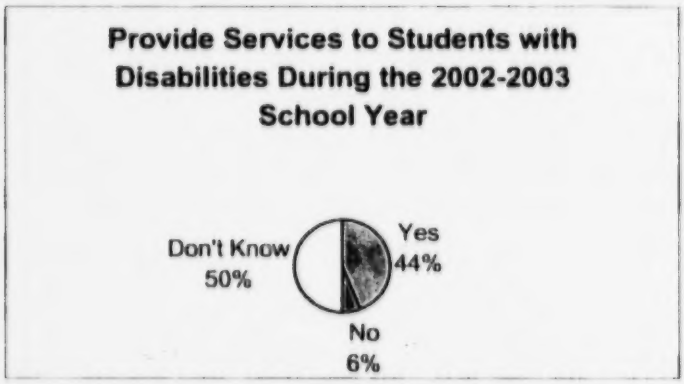
Ten out of the 12 (83%) survey respondents said they were not aware of the percentage of ELLs in the area(s) or district(s) in which they were providing services, while two (17%) of the providers said that they were aware of these statistics. Nine of the 12 (75%) survey respondents said that the DOE had not given them information regarding these statistics, and three (25%) providers did not know whether or not they had been provided with this information.

Students with Disabilities

Only 50% (eight out of 16) of providers surveyed knew whether or not they were currently providing services to students with disabilities. Of these eight providers, seven said that they were serving students with disabilities at the time of our conversation and one said they were not, 44% and 6% respectively. An additional 50% (eight) did not know whether or not there were students with disabilities currently enrolled in their program.

Six out of the 16 (37%) providers surveyed indicated that there were services available specific to the needs of this population, while seven (44%) said that they did not have services specifically targeted for students with disabilities.[78] Three of the 16 (19%) providers surveyed did not know whether or not they had services targeted for students with disabilities. The providers who either did not have services targeted for this population or were not aware of them, indicated that if they had been informed of the need for these services prior to the commencement of the program they would have made available accommodations and services suitable for students with disabilities.

[78] Some of these providers indicated that they had individualized learning or multi-sensory approaches so they could work with special education students, but they were not targeted specifically for that population.



Provider S, who did not know whether or not they were serving students with disabilities at the time of the survey stated that they typically have students with IEPs and disabilities, but because they have gotten no information from the NYC school districts they were not able to readily identify this contingent. Even though they contacted districts repeatedly, they never were able to obtain the information. Provider S said that they don't have explicit programs for students with disabilities, but had they known prior to the commencement of service provision, they would have fit the staff to accommodate the need. It is also important to note that other districts they have a contract with did provide information on disability.

Similarly, Provider O said that there is a portion of paperwork where the school is to inform the provider of the status of the children, but they never received that. At the same time they admitted that they were not in a position to provide special education services in general, though it depended on the specific need. Provider O said that they do hope to develop greater expertise in that area. They stated that though they that were sure there were some students with disabilities in their program, they were unable to specify how many.

Provider E and Provider H both indicated that they were not aware of the presence of students with disabilities in their programs because they had not been provided with this information. Provider E, who did not know how many students with disabilities they were serving, said that they stumbled into this information as they spoke with parents and received nothing from the DOE. Provider E said their agency made every effort to get this information from parents and/or students at the beginning of the program. When they are able to obtain this information, Provider E said that they try to get a hold of students IEPs and individualize the services they are providing to whatever the goals of the IEP are. Provider H did not indicate that they had targeted services available for this population but said that they would be willing to spend additional time with those students and would welcome a paraprofessional if necessary.

Provider T, who knew there were students with disabilities in their program but was unable to say how many, said that there are no services designed specifically for this population. In general, Provider T said that the nature of the program is individualized.

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They said that they did receive one list from central office which had a code specifying special education in general, but did not state specifically which students had which disabilities. In addition, they noted that the provider is supposed to make an individualized student plan after assessment, but that they have not followed this protocol because they are already providing services in the school.

Provider P noted that their services are not designed to target learning disabled and/or special education students. At the same time they said that their program seems to work well with all students and that the majority of time is spent working with students on an individual basis. Provider P noted that they have been candid about their abilities to work with some students and not others.

Both Provider L and Provider N did not know whether or not there were students with disabilities enrolled in their program to receive SES. Provider L did say that they have faculty with training in special education and that the program is particularly good for students with speech problems because it is all text based. Provider N did not know of services targeted for this population.

Provider M, who did not know how many students with disabilities were receiving services, did indicate that they had the capacity to serve this population. In general this program uses a multi-sensory approach for children with specific problems, and materials are adapted to the particular need. They said that everything is broken down and individualized, thus making it suitable for students with disabilities. Similarly, Provider B noted that they have staff experienced in working with special education students and small group teaching is used with this population.

Provider I seemed to be the only program that adequately looked at the needs of students with disabilities. They developed a diagnostic pre-test to identify problem areas and post-test to show the progress in that specific area. In the case of students with disabilities, they matched the results of the pre-test with the student's IEP and created a modified IEP for their program. Provider I was surprised to find that not all providers were not doing something such as this and did not understand how a program could effectively tutor students without testing them and diagnosing their specific needs.

Fundamental Lack of Information and Misunderstanding Between Private Providers and NYSED and the DOE Regarding Service to ELLs and Disabled Students

The NCLB is clear that both NYSED and the DOE are responsible for ensuring the availability of services to students with disabilities and ELL students. It is also clear that although the appropriate services with necessary accommodations must be made available to these populations, not all providers are required to be able to serve them. However, it appears that all private providers this past year have stated they are available to serve these populations but survey results bring this into serious question. Many providers did not even know if they actually were serving these students or not, and only a few had created any type of program or accommodation to properly serve them. This is

clearly unacceptable and requires investigation. During the 2003-2004 year NYSED should monitor all providers to determine that those who said they can serve these students actually can do so in a meaningful manner.

On the provider side, it appears that they expected the information about a child's ELL or disabled status to automatically come from the DOE. Because of the federal Family Education Rights and Privacy Act (FERPA)[79] it is likely that the DOE would be unable to give this information to a private provider. Thus a private provider would need to ask these questions themselves and either have parents sign a release to get this information or have the parents get it themselves. The idea that SES provision could be occurring without the private providers knowing and carrying out these obligations is disturbing to say the least. If this has not already been done, NYSED in the RFP process must clearly lay out responsibilities for providers and the DOE must work with the providers and explain how they can get this information.

IV. Conclusion and Recommendations

This survey of providers to assess the implementation and effectiveness of the SES program required under the NCLB has uncovered major gaps in understanding between providers and the DOE and NYSED which resulted in a lack of effective outreach to parents of eligible students, and a lack of proper services. These findings need to be taken seriously on a state and city level if provision of services is to both expand and improve. Most importantly, serious efforts to reach those children at highest risk, those who are ELLs and those who are disabled, must begin in earnest.

To accomplish this AFC recommends the following:

I. Communication to Parents Must be Clearer

Survey findings indicate that many Title I eligible parents never received information on SES, or oftentimes, received it in an untimely manner, or in a language they could not read. Furthermore, it was often cited that the content of the parent information letters were inaccessible for the targeted population. Letters must be re-drafted to be parent friendly, and there must be better accountability to assure that the letters actually go out on time, and in the correct language that the parent speaks, and allowed for enough time for parents to make informed choices.

Parent outreach appears to have been inconsistent across New York City in almost every area according to survey respondents. Though this may be partially attributed to this being the first time SES were implemented, NYC can learn from mistakes by having better thought out planning and a longer timeline, with greater monitoring and accountability.

[79] 20 U.S.C. § 1232g; 34 CFR Part 99.

Another problem with communication was the hurried timeline in which the DOE had to implement the NCLB SES mandates. The New York State Education Department (NYSED) issued its RFP extremely late and so didn't even get the certified providers to the DOE until the beginning of the school year. Inexplicably, the same thing happened this past summer with NYSED not issuing its RFP until late July and having it due on August 15th, thus slowing the process of getting information to parents as soon as possible. Next year, we urge NYSED to send out the RFP in late Spring and have the providers chosen before the end of July so that the DOE and all other school districts in NYC can act more quickly and efficiently.

II. Cooperation between City and State Officials and Private Providers Must Dramatically Improve

Private providers indicated how difficult it was for them to enter schools and promote their services, how generally unresponsive the DOE was to them, and some respondents clearly felt that an uneven playing field had been created between private providers and DOE providers, pitting them against each other for students. It appears that greater responsiveness by the DOE to these private providers is in order. Without better cooperation the NYC schools may risk not enrolling thousands of eligible students and not offering all eligible students the panoply of choice of services that is available.

III. Services to the most at-risk users of SES, English Language Learner (ELL) Students and Students with Disabilities Must Be Uniformly Implemented in order for them to be properly served as required by the NCLB

Despite the regulations and guidance regarding the provision of SES to students with disabilities and ELL students survey respondents indicated that they had little knowledge of the necessity to accommodate these populations. The New York State Education Department (NYSED) is obligated under federal law to both certify a sufficient number of providers to serve these populations, and monitor that proper services are being offered and provided. It appears from our survey that few of the private providers knew about this obligation, or had implemented proper programs to serve these populations, though most indicated a willingness to do so if they had been so notified. This indicates a major problem with the NYSED process for choosing providers. NYSED needs to overhaul the administration of SES programs and to formulate a proposal for services that clearly indicates whether a provider can serve these populations and how they will do so. NYSED also needs to engage in effective monitoring to ensure that these services are actually being offered and provided. NYSED then must clearly state to parents which agencies can actually adequately serve these two populations.

For the private providers a willingness to provide services must be translated into actual provision of services, or a clear statement that the particular provider is unable to serve one or both of these populations.

The accuracy of the DOE's reporting to the State Education Department regarding services to these populations is questionable in that it asserts that 100% of these students

were properly served, an assertion belied by our survey findings and anecdotal evidence to the contrary. NYSED must follow up with the DOE to assure proper provision.

English Language Learners and students with disabilities were seriously underrepresented in the total number of students receiving SES, indicating that the existence of real barriers (such as language) to receiving these services, requires further investigation and action both by the DOE and NYSED.

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